

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5970 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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MOHANBHAI PATEL & 1 - Petitioner(s)
Versus
HEMLATA GOVINDBHAI AGHERA & 4 - Respondent(s)

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Appearance :

MR HARSHADRAY DAVE FOR MR SN SHELAT for Petitioner(s)
MS MN KERRAWALA FOR M/S TANNA ASSOCIATES for Respondent No.2
MS SEJAL SUTHARIA FOR MR VH DESAI for Respondent(s) : 1,
MS MANISHA L. SHAH for Respondent(s) : 3, 5,
MR AR THACKER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the legality of the order dated 10th

November, 1987 passed by the Gujarat Affiliated Colleges Services Tribunal (hereinafter to be referred to as "the Tribunal") in Application No.42 of 1986 filed by respondent Nos.1 & 2 herein.

2.Short facts leading to the present petition are that respondent Nos.1 & 2 were appointed as PT Instructor and Librarian respectively by the petitioners herein. Respondent No.1 was appointed as PT Instructor by the order dated 5.6.84. She possessed the qualifications of B.A. & D.P.Ed. Respondent No.2 was appointed as Librarian also by the order dated 5.6.84. He possessed the qualification of B.Com., B.Lib. Though the qualifications held by the respondents did not fulfill the requirements under the Rules for the posts in question, since teachers with requisite qualifications were not readily available, the appointment of respondent No.1 was approved by the Saurashtra University by the order dated 22.3.86. In case of respondent No.2, there was no such specific approval, but the fact remains that at the relevant time, teachers with necessary qualifications were not readily available and respondent No.2 herein therefore continued to discharge his duties on the posts in question.

3. Finding that the said respondents did not fulfill the necessary qualifications as prescribed under the GR dated 19.12.83, their engagements were held not admissible for the purpose of grant. The College, therefore, by two separate orders both dated 22nd July 1986 terminated their services finding that since the college cannot receive grant for their appointments, their services cannot be continued. The said respondents, therefore challenged the action of the petitioners herein by filing Application No.42/86 before the Tribunal.

4. The Tribunal finding that though the teachers concerned did not fulfill the necessary qualifications as per the Government Resolution, teachers with necessary qualifications were not available and following the decision of the learned single Judge of this Court in Special Civil Application No.872 of 1985 decided on 18th April 1986, allowed the applications. The Tribunal, relied on the observations made by the learned single Judge of this Court wherein the learned single Judge was pleased to come to the conclusion that for the teachers engaged after 19.12.83, they should be given additional chance for acquiring prescribed higher qualifications within five years. The Tribunal,

therefore, found that the action of the college in terminating the services of the teachers were illegal. The Tribunal also found that the procedure as laid down in section 14 of the Gujarat Affiliated Services Tribunals Act though required to be followed in the present case, was not followed by the college. In the result, the Tribunal was pleased to allow the application and set aside the termination of the employees.

5.The petitioners have challenged the said orders passed by the Tribunal on various grounds.

6.Learned advocate Shri Dave appearing for the petitioners submitted that the Tribunal erred in holding that the procedure under section 14 of the Gujarat Affiliated Services Tribunal Act was required to be followed. He submitted that the petitioners had passed an order of termination simpliciter and the same was not a penal action against the teachers and the procedure laid down under section 14 of the said Act was, therefore, not required to be followed. He further pointed out that even within the time limit prescribed by the learned Judge in his order dated 18th April 1986 passed in Special Civil Application No.872 of 1985, neither of the respondents have acquired the

higher qualifications prescribed for the posts in question. He pointed out that respondent No.1 has not acquired the qualifications at all whereas respondent No.2 though did pass the M.Lib., the same was not within the time permitted by the State Government. He therefore, submitted that the orders passed by the Tribunal should be set aside.

7.Learned AGP Ms.Manisha Lavkumar submitted that the concerned respondents did not have the educational qualifications at the time of their appointment. Subsequently, also they have not acquired the qualifications within the time permitted. The Tribunal therefore could not have set aside their termination orders.

8.Learned advocate Ms.Sutharia appearing for respondent No.1 submitted that the said respondent has discharged her duties right from 1984 till date. She continues to discharge duties even now. Now there are less than seven years before she crosses the age of superannuation. She, therefore, would opt for voluntary retirement instead of being terminated from service.

9.Learned advocate Ms.Kerrawala appearing for respondent No.2 submitted that respondent No.2, however, belatedly

did acquire higher qualification and that he could not earlier appear for the said examination on account of a sad mishap in his family. His son had expired which left respondent No.2 in utter state of shock. He, therefore, could not appear within the time permitted by the State Government. However, subsequently he did acquire the higher qualifications required. His services therefore could not be disturbed especially considering the fact that he has discharged his duties right from 1984 and he has about three years to go before he crosses the age of superannuation. She further submitted that the Government had extended the time for acquisition of higher qualifications from time to time. Unfortunately, respondent No.2 could not avail of the last opportunity on account of the sad developments in his family. However, a sympathetic and humanitarian approach should be taken in his case and his service should be saved. She submitted that though the order of termination is passed without hearing, the said respondent would not like to stand on technicalities and would urge before the Court that in the facts of the present case his services could not be disturbed.

10. Having heard the learned advocates appearing for the

parties, it can be seen that one of the grounds on which the Tribunal set aside the order was that the procedure laid down under section 14 of the Gujarat Affiliated Services Tribunal Act was not followed. In the case of Gujarat Vidyapith v. B.N.Bharwad, 2005 (1) G.L.H. 236 it has been held by this Court that the procedure laid down under section 14 of the Act is required to be followed only in case of penal termination and would not apply to simpliciter order of termination passed by the employer. The said ground therefore cannot be placed in service for setting aside the termination orders.

11. In case of respondent No.1, admittedly she has not acquired the necessary qualifications at any point of time either before or even after the time permitted by the Government in this regard. She, therefore, cannot have a case for opposing her termination. However, she has continued in service right from 1984 and also discharged her duties under judicial orders of this Court till date. If she applies for voluntary retirement, considering the fact that she has less than 6 or 7 years service before crossing the age of superannuation, it will be open for the Authorities to consider such a request. Until such time her request

is considered, despite allowing of this petition, the Authority shall not implement the order of termination against her.

12. So far as respondent No.2 is concerned, he has acquired higher qualification though in May 1994 which is some time after the last extension was granted by the Government. Though material is not placed on record in this regard, learned advocate for respondent No.2 submitted that there were valid reasons which prevented respondent No.2 from appearing at the examination earlier. She has suggested that son of respondent No.2 had expired which left him in deep distress due to which he could not pass the examination earlier. If all these aspects of the matter are brought to the notice of the Authorities, it would be appropriate that the Authorities should consider for giving relaxation in favour of respondent No.2 as a special case and to save him from facing termination especially when he has discharged his duties right from 1984 and continues to do so under the court orders. It would also be relevant to take into account that he has only about 3 years to go before his superannuation. If there was any requirement under the Services Rules to apply for appearing at the examination and in his

application if the respondent No.2 has made out a case for personal hardship, and on the basis of which any such permission was granted, it would be a relevant factor to be gone into, but for want of necessary material in this regard I refrain from making any conclusive observation. Suffice it to say that if respondent No.2 makes a representation to the Authorities to treat him as a special case and to condone his delay in passing the examination after the time limit granted was over, such a representation will be considered and decided in accordance with law within a period of four months of date of receipt of such a representation. Until such time the representation is decided, respondent No.2 shall be continued in service. Needless to say, if the decision of the Authorities is adverse to the said respondent, it will be open for him to take such legal recourse as may be available under law.

13. Subject to the above observations and directions, the petition is partially allowed. The decision of the Tribunal is modified to the extent mentioned herein-above. It will be open for the petitioners to take appropriate steps bearing in mind the observations made herein-above and the directions issued. Rule is made

absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)